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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1962

No. 129

WILLIAM JOSEPH BRYAN, *Petitioner*,

vs.

STATE OF NEVADA, *Respondent*.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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Petitioner seeks a Writ of Certiorari to review the order of the Supreme Court of Nevada, dismissing his appeal.

OPINION BELOW

The Supreme Court of Nevada in an opinion filed February 7, 1962, and reported at 78 Nev. 38, 368 P.2d 672, dismissed the appeal of the petitio er and in an order filed March 7, 1962 denied a rehearing on the dismissal of the appeal.

QUESTIONS PRESENTED FOR REVIEW

I

Did the delay in bringing petitioner to trial, where the delay was consented to by petitioner's attorney and not objected to by

petitioner, violate the provisions of the Sixth and Fourteenth Amendments to the United States Constitution concerning an accused's right to a speedy trial?

II

Did the Nevada Supreme Court deny the petitioner any right, privilege or immunity claimed under the United States Constitution, treaties or statutes, by dismissing his appeal of a state court conviction for the reason that petitioner failed to comply with the state court procedures for taking his appeal?

REASONS FOR DENYING THE WRIT AND ARGUMENT AMPLIFYING SAME

I

DEFENDANT WAIVED HIS RIGHT TO THE CONSTITUTIONAL GUARANTEE OF A SPEEDY TRIAL BY CONSENTING TO THE DELAY AND FAILING TO ASSERT HIS RIGHT.

The defendant, through his attorney, consented to all delays and continuances and concurred in and did not object to the trial dates set by the Court, and in doing so, waived any objection to the delay in bringing him to trial. (Affidavit of William J. Raggio, pages 93, 94, 95, Vol. I, Record on Appeal.) Further, the defendant made no application to the Court for an earlier trial setting and thereby again waived his right to a speedy trial. Campondonico v. U. S. 222 F.2d 310, Certiorari denied, 350 U.S. 831.

II

THE UNITED STATES SUPREME COURT WILL NOT REVIEW THE DECISIONS OF STATE COURTS AS TO QUESTIONS OF STATE PRACTICES OR PROCEDURES.

The decision of the Nevada Supreme Court that the appeal was moot is a matter of state court practice and procedure. Ordinarily the United States Supreme Court will not review the decisions of state courts as to questions of state practice or procedure. 36 C.J.S. Federal Courts 269; Bute v. Illinois, 333 U.S. 640.

In Bute v. Illinois 333 U.S. 640, the court observed, "The present case, on the other hand, illustrates equally well the kind of judgments by a state court that should not be invalidated as lacking in the due process of law required by the Fourteenth Amendment. This is so, although the procedure followed, in 1938, by the state court in the instant cases, as to counsel for the accused might not have satisfied the practice then required of a federal court in the case of comparable federal crimes. The Fourteenth Amendment, however, does not say that no state shall deprive any person of liberty without following the *federal* process of law as prescribed for the federal courts in comparable federal cases. It says merely 'nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *.' This *due* process is not an equivalent for the process of the federal courts or for the process of any particular state. It has reference rather to a standard of process that may cover many varieties of processes that are expressive of differing combinations of historical or modern, local or other juridical standards, provided they do not conflict with the 'fundamental principles of liberty and justice which lie at the base of all our civil and political

institutions * * *.' Hebert v. Louisiana, supra (272 U.S. at p. 316, 71 L.Ed. 272, 47 S.Ct. 103, 48 A.L.R. 1102). This clause in the Fourteenth Amendment leaves room for much of the freedom which, under the Constitution of the United States and in accordance with its purposes, was originally reserved to the states for their exercise of their own police powers and for their control over the procedure to be followed in criminal trials in their respective courts. It recognizes that differences arise naturally between the procedures in the state courts and those in the federal courts."

The petitioner was not denied an opportunity to appeal his conviction to the Nevada Supreme Court if he had followed the proper procedure. Such procedure would have been to obtain a stay of execution and take his appeal to the Nevada Supreme Court. Instead, petitioner elected to ignore the procedure established in the State of Nevada, and now alleges a violation of his right, guaranteed by the Fourteenth Amendment to the United States Constitution.

The practice and procedure followed by the Nevada Supreme Court does not close the door to any consideration of a claim of denial of a state or federal right. The petitioner closed the door himself when he elected to ignore the established practice and procedure in Nevada.

The State of Nevada has the right to determine under what circumstances and under what conditions an appeal of a criminal conviction may be had. Due process does not require a state to afford any appellate review of a criminal conviction. McKane v. Durston, 153 U.S. 684. It has long been recognized by this Court that the right of review in an appellate court is purely a matter of state concern. Kohl v. Lehlback, 160 U.S. 293.

CONCLUSION

The petition for Writ of Certiorari should be denied.

Respectfully submitted,

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